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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,321

04/06/2006

Marc Chilla

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EXAMINER

FLETCHER III, WILLIAM P

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

06/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,321	Applicant(s) CHILLA ET AL.	
	Examiner William P. Fletcher III	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/14/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed September 14, 2006, has been considered.

Claim Objections

2. Claims 4-9 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim may not depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, claims 4-9 have not been further treated on the merits.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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5. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlaak (US 5,976,343 A) in view of Tsunoda et al. (US 6,331,326 B1).

A. Schlaak teaches a process for the production of a multi-layer coating on a substrate comprising the successive steps of: applying a base coat layer to a pre-coated (EDC primer) substrate; applying a clear coat layer onto the base coat layer; and jointly curing the base coat and clear coat layers [abstract]. Schlaak further teaches that the base coat layer includes two layers, together totaling 17-45 microns thick [abstract]. The first coating has a thickness of 10-30 microns and the second coating has a thickness of 7-15 microns [abstract]. The first base coat layer is a water-borne base coat that is 'modified' within the context of the Applicant's disclosure (see 17:6-18:12 of the specification) because it contains an admixture component [abstract and 3:40-7:65]. The second base coat layer is a water-borne base coat that is 'unmodified' within the context of Applicant's disclosure (see 17:6-18:12 of the specification) because it does not contain an admixture component [abstract and 3:40-7:65]. It is clear from the disclosure of Schlaak that the first and second base coating layers are formed from the same material [6:44+]. Schlaak's range of 17-45 microns overlaps Applicant's claimed range of 10-30 microns. In the case where a claimed range overlaps a range disclosed by the prior art, a *prima facie* case of obviousness exists. See MPEP 2144.05(I). Schlaak further discloses that the base coat layer(s) has/have a ratio, by weight, of pigment content to solids content of 0.03:1 to 3:1, preferably 0.06:1 to 0.6:1 [6:25-35], which encompasses

Applicant's claimed range of 0.05:1 to 0.6:1. Again, in the case where a claimed range overlaps a range disclosed by the prior art, a *prima facie* case of obviousness exists. Either base coat may contain 'any conventional pigments,' with aluminum metal pigments expressly disclosed [5:30-42]. Schlaak also teaches that pigments include 'inorganic and/or organic coloured pigments and/or effect pigments and optionally fillers [5:30-42, emphasis added]. It is the Examiner's position that this teaching is inclusive of at least one, additional special effect pigment.

B. Schlaak does not expressly teach that the pigment is a metal flake pigment, present in 0.1-5 wt.% and having a thickness of 10 to 100 nm. Tsunoda teaches a paint coating composition, suitable for use in a multi-layer coating, which contains, as a metallic pigment, aluminum flakes having a thickness of 0.1-1 micron (100-1000 nm) [5:6+]. It would have been obvious to one of ordinary skill in the art to modify the process of Schlaak so as to utilize, as the aluminum metal pigment, the aluminum flakes having a thickness of 0.1-1 micron. One of ordinary skill in the art would have been motivated to do so by the desire and expectation of successfully pigmenting the paint coating composition(s), based on the teaching of Tsunoda that aluminum flake pigment of this size is suitable to accomplish this. With respect to pigment concentration, it is the Examiner's position that this is a result-effective variable. The pigment must be present in an amount sufficient to achieve the desired pigmentation or effect, but not so much that it adversely affects coating characteristics such as viscosity, flowability,

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uniformity, etc. Consequently, absent clear and convincing evidence of unexpected results demonstrating the criticality of the claimed concentration of metal flake pigment.

C. Finally, with respect to UV transmission, such is a physical property of the coating. Since the cited prior art teaches Applicant's claimed coating materials and method, it is the Examiner's position that the coating thereof inherently possesses these properties. There is no evidence of record establishing that the coating of the prior art does not/cannot possess these properties.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Fletcher III whose telephone number is (571) 272-1419. The examiner can normally be reached on Sunday, 5:00 AM - 12:00 PM and Monday through Friday, 5:00 AM - 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy H. Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William Phillip Fletcher III/
Primary Examiner, Art Unit 1792

June 18, 2009